

Introduced by Senator Margett

February 18, 2005

An act to amend Section 11370.4 of the Health and Safety Code, and to amend Sections 1203.07 and 1203.073 of the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as introduced, Margett. Uniform Controlled Substances Act.

Existing law classifies controlled substances into 5 schedules and places the greatest restrictions and penalties on the use of those substances placed in Schedule I. The drug 3,4-methylenedioxymphetamine, also known as MDA, is a psychedelic hallucinogenic drug that is not classified within any of the schedules under the state controlled substances law, but is classified as a Schedule I drug under the federal controlled substances law. Existing law makes it a crime to possess for sale or sell designated controlled substances.

This bill would make it a crime to possess for sale or sell MDA. The bill would make conforming changes to related provisions. By creating new crimes, this bill would impose a state-mandated local program upon local governments.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.

(5) Where the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.

(6) Where the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) Any person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP), 3,4-methylenedioxyamphetamine(MDA), and its analogs shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.

1 (4) Where the substance exceeds 20 kilograms by weight, or
2 400 liters by liquid volume, the person shall receive an additional
3 term of 15 years.

4 In computing the quantities involved in this subdivision, plant
5 or vegetable material seized shall not be included.

6 The conspiracy enhancements provided for in this subdivision
7 shall not be imposed unless the trier of fact finds that the
8 defendant conspirator was substantially involved in the planning,
9 direction, execution, or financing of the underlying offense.

10 (c) The additional terms provided in this section shall not be
11 imposed unless the allegation that the weight of the substance
12 containing heroin, cocaine base as specified in paragraph (1) of
13 subdivision (f) of Section 11054, cocaine as specified in
14 paragraph (6) of subdivision (b) of Section 11055,
15 methamphetamine, amphetamine, or phencyclidine (PCP) and its
16 analogs exceeds the amounts provided in this section is charged
17 in the accusatory pleading and admitted or found to be true by
18 the trier of fact.

19 (d) The additional terms provided in this section shall be in
20 addition to any other punishment provided by law.

21 (e) Notwithstanding any other provision of law, the court may
22 strike the additional punishment for the enhancements provided
23 in this section if it determines that there are circumstances in
24 mitigation of the additional punishment and states on the record
25 its reasons for striking the additional punishment.

26 SEC. 2. Section 1203.07 of the Penal Code is amended to
27 read:

28 1203.07. (a) Notwithstanding Section 1203, probation shall
29 not be granted to, nor shall the execution or imposition of
30 sentence be suspended for, any of the following persons:

31 (1) Any person who is convicted of violating Section 11351 of
32 the Health and Safety Code by possessing for sale 14.25 grams or
33 more of a substance containing heroin.

34 (2) Any person who is convicted of violating Section 11352 of
35 the Health and Safety Code by selling or offering to sell 14.25
36 grams or more of a substance containing heroin.

37 (3) Any person convicted of violating Section 11351 of the
38 Health and Safety Code by possessing heroin for sale or
39 convicted of violating Section 11352 of the Health and Safety
40 Code by selling or offering to sell heroin, and who has one or

1 more prior convictions for violating Section 11351 or Section
2 11352 of the Health and Safety Code.

3 (4) Any person who is convicted of violating Section 11378.5
4 of the Health and Safety Code by possessing for sale 14.25 grams
5 or more of any salt or solution of phencyclidine or any of its
6 analogs as specified in paragraph (21), (22), or (23) of
7 subdivision (d) of Section 11054 or in paragraph (3) of
8 subdivision (e) of Section 11055 of the Health and Safety Code,
9 or any of the precursors of phencyclidine as specified in
10 paragraph (2) of subdivision (f) of Section 11055 of the Health
11 and Safety Code.

12 (5) Any person who is convicted of violating Section 11379.5
13 of the Health and Safety Code by transporting for sale, importing
14 for sale, or administering, or offering to transport for sale, import
15 for sale, or administer, or by attempting to import for sale or
16 transport for sale, phencyclidine or any of its analogs or
17 precursors.

18 (6) Any person who is convicted of violating Section 11379.5
19 of the Health and Safety Code by selling or offering to sell
20 phencyclidine or any of its analogs or precursors.

21 (7) Any person who is convicted of violating Section 11379.6
22 of the Health and Safety Code by manufacturing or offering to
23 perform an act involving the manufacture of phencyclidine or
24 any of its analogs or precursors.

25 As used in this section “manufacture” refers to the act of any
26 person who manufactures, compounds, converts, produces,
27 derives, processes, or prepares, either directly or indirectly by
28 chemical extraction or independently by means of chemical
29 synthesis.

30 (8) Any person who is convicted of violating Section 11380 of
31 the Health and Safety Code by using, soliciting, inducing,
32 encouraging, or intimidating a minor to act as an agent to
33 manufacture, compound, or sell any controlled substance
34 specified in subdivision (d) of Section 11054 of the Health and
35 Safety Code, except paragraphs (13), (14), (15), (20), (21), (22),
36 and (23) of subdivision (d), or specified in subdivision (d), (e), or
37 (f) of Section 11055 of the Health and Safety Code, except
38 paragraph (3) of subdivision (e) and subparagraphs (A) and (B)
39 of paragraph (2) of subdivision (f).

(9) Any person who is convicted of violating Section 11380.5 of the Health and Safety Code by the use of a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Section 11378.5, 11379.5, or 11379.6 of the Health and Safety Code insofar as the violation relates to phencyclidine or any of its analogs or precursors.

(10) Any person who is convicted of violating subdivision (b) of Section 11383 of the Health and Safety Code by possessing piperidine, pyrrolidine, or morpholine, and cyclohexanone, with intent to manufacture phencyclidine or any of its analogs.

(11) Any person convicted of violating Section 11351, 11351.5, or 11378 of the Health and Safety Code by possessing for sale cocaine base, cocaine, ~~or~~ methamphetamine, *or 3,4-methylenedioxyamphetamine (MDA)*, or convicted of violating Section 11352 or 11379 of the Health and Safety Code, by selling or offering to sell cocaine base, cocaine, ~~or~~ methamphetamine, *or 3,4-methylenedioxyamphetamine (MDA)* and who has one or more convictions for violating Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, or 11379.5 of the Health and Safety Code. For purposes of prior convictions under Sections 11352, 11379, and 11379.5 of the Health and Safety Code, this subdivision shall not apply to the transportation, offering to transport, or attempting to transport a controlled substance.

(b) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 3. Section 1203.073 of the Penal Code is amended to read:

1203.073. (a) A person convicted of a felony specified in subdivision (b) may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted in such a case, the court shall specify on the record and shall enter in the minutes the circumstances indicating

1 that the interests of justice would best be served by such a
2 disposition.

3 (b) Except as provided in subdivision (a), probation shall not
4 be granted to, nor shall the execution or imposition of sentence
5 be suspended for, any of the following persons:

6 (1) Any person who is convicted of violating Section 11351 of
7 the Health and Safety Code by possessing for sale, or Section
8 11352 of the Health and Safety Code by selling, a substance
9 containing 28.5 grams or more of cocaine as specified in
10 paragraph (6) of subdivision (b) of Section 11055 of the Health
11 and Safety Code, or 57 grams or more of a substance containing
12 cocaine as specified in paragraph (6) of subdivision (b) of
13 Section 11055 of the Health and Safety Code.

14 (2) Any person who is convicted of violating Section 11378 of
15 the Health and Safety Code by possessing for sale, or Section
16 11379 of the Health and Safety Code by selling, a substance
17 containing 28.5 grams or more of methamphetamine *or*
18 *3,4-methylenedioxyamphetamine (MDA)*, or 57 grams or more of
19 a substance containing methamphetamine *or*
20 *3,4-methylenedioxyamphetamine (MDA)*.

21 (3) Any person who is convicted of violating subdivision (a)
22 of Section 11379.6 of the Health and Safety Code, except those
23 who manufacture phencyclidine, or who is convicted of an act
24 which is punishable under subdivision (b) of Section 11379.6 of
25 the Health and Safety Code, except those who offer to perform
26 an act which aids in the manufacture of phencyclidine.

27 (4) Except as otherwise provided in Section 1203.07, any
28 person who is convicted of violating Section 11353 or 11380 of
29 the Health and Safety Code by using, soliciting, inducing,
30 encouraging, or intimidating a minor to manufacture, compound,
31 or sell heroin, cocaine base as specified in paragraph (1) of
32 subdivision (f) of Section 11054 of the Health and Safety Code,
33 cocaine as specified in paragraph (6) of subdivision (b) of
34 Section 11055 of the Health and Safety Code, or
35 methamphetamine.

36 (5) Any person who is convicted of violating Section 11351.5
37 of the Health and Safety Code by possessing for sale a substance
38 containing 14.25 grams or more of cocaine base as specified in
39 paragraph (1) of subdivision (f) of Section 11054 of the Health
40 and Safety Code or 57 grams or more of a substance containing

1 at least five grams of cocaine base as specified in paragraph (1)
2 of subdivision (f) of Section 11054 of the Health and Safety
3 Code.

4 (6) Any person who is convicted of violating Section 11352 of
5 the Health and Safety Code by transporting for sale, importing
6 for sale, or administering, or by offering to transport for sale,
7 import for sale, or administer, or by attempting to import for sale
8 or transport for sale, cocaine base as specified in paragraph (1) of
9 subdivision (f) of Section 11054 of the Health and Safety Code.

10 (7) Any person who is convicted of violating Section 11352 of
11 the Health and Safety Code by selling or offering to sell cocaine
12 base as specified in paragraph (1) of subdivision (f) of Section
13 11054 of the Health and Safety Code.

14 (8) Any person convicted of violating Section 11379.6, 11382,
15 or 11383 of the Health and Safety Code with respect to
16 methamphetamine, if he or she has one or more prior convictions
17 for a violation of Section 11378, 11379, 11379.6, 11380, 11382,
18 or 11383 with respect to methamphetamine.

19 (c) As used in this section, the term “manufacture” refers to
20 the act of any person who manufactures, compounds, converts,
21 produces, derives, processes, or prepares, either directly or
22 indirectly by chemical extraction or independently by means of
23 chemical synthesis.

24 (d) The existence of any previous conviction or fact which
25 would make a person ineligible for probation under this section
26 shall be alleged in the information or indictment, and either
27 admitted by the defendant in open court, or found to be true by
28 the jury trying the issue of guilt or by the court where guilt is
29 established by a plea of guilty or nolo contendere or by trial by
30 the court sitting without a jury.

31 SEC. 4. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a
38 crime within the meaning of Section 6 of Article XIII B of the
39 California Constitution.

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